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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/531,295

11/15/2005

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1034170-000028

6251

21839 7590 04/02/2009
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POST OFFICE BOX 1404
ALEXANDRIA, VA 22313-1404

EXAMINER

TUCKER, DANIEL P

ART UNIT

PAPER NUMBER

3781

NOTIFICATION DATE

DELIVERY MODE

04/02/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

Office Action Summary	Application No. 10/531,295	Applicant(s) CASALE ET AL.	
	Examiner Daniel Tucker	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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4. Claims 1, 8, 9, 12, 14, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,915,574 (Adams et al. hereinafter) in view of US Patent No. 5,108,003 (Granofsky hereinafter).

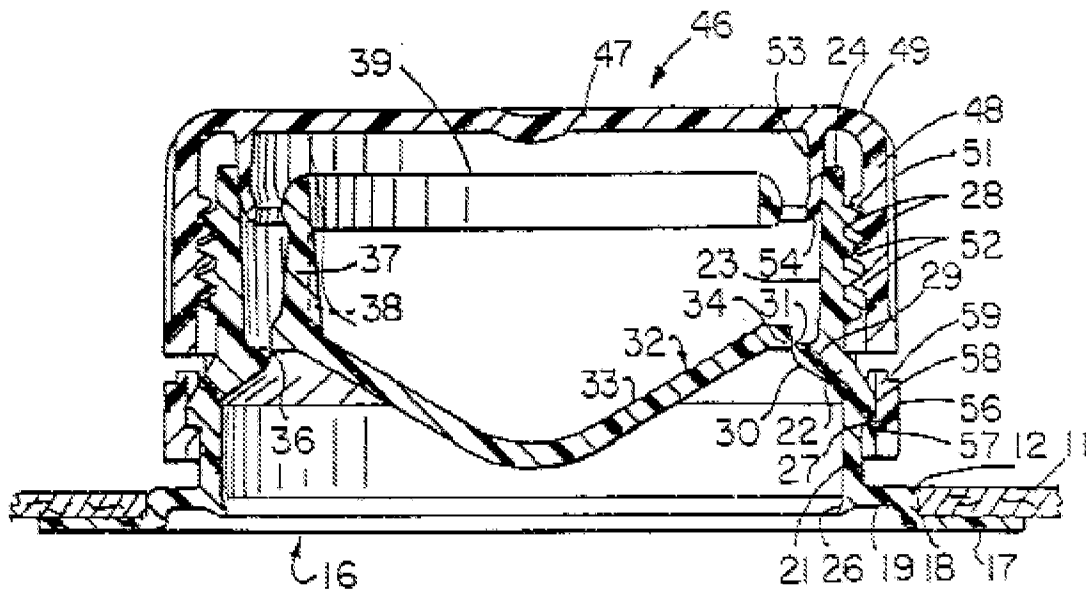
*FIG. 1*

Fig. 1 of Adams et al.

5. In re Claims 1 and 14, with reference to Fig. 1 above, Adams et al. discloses:

A sealed package for pourable food products,

having a closable opening device in turn comprising a frame (16) defining a pour opening (12) and fixed to said package (11),

a cap (46) fitted to said frame to close said pour opening and movable to free the pour opening, and

pull-off opening means (39) housed in said frame (16) and comprising a rigid plate (32) extractable from the frame (16), by pulling action.

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6. Adams et al. does not disclose a removable portion and a pull tab of sheet material interposed between the removable portion and the rigid plate.

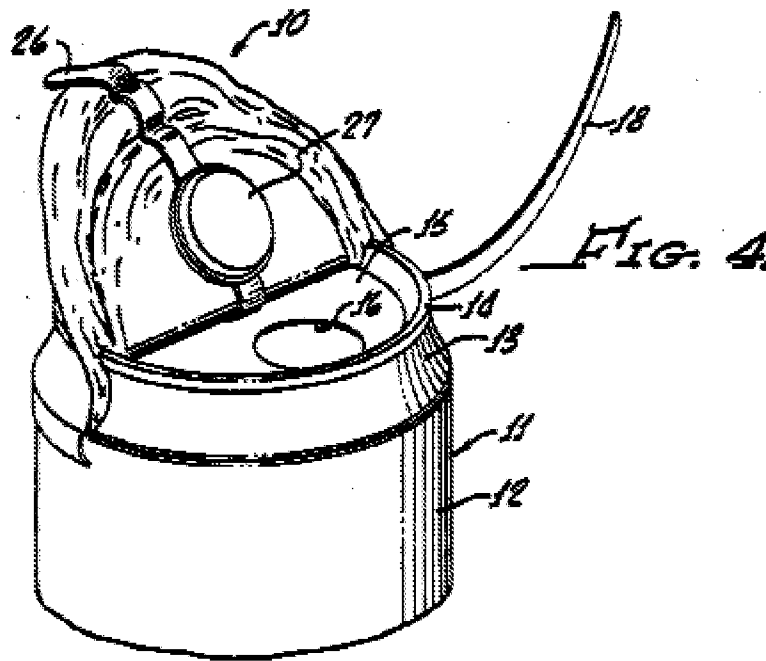


Fig. 4 of Granovsky

7. However, with reference to Fig. 4 above, Granofsky discloses a removable portion (27) and a pull tab of sheet material (26).

8. Thus, it would have been obvious one having ordinary skill in the pertinent art at the time the invention was made to have modified the package disclosed by Adams et al. to have a removable portion and a pull tab of sheet material in order to provide a sanitary cover for the opening.

9. In re Claim 8, with reference to Fig. 1 above, Adams et al. discloses that the plate (32) is connected integrally to the frame (16) by breakable connecting means (31) defining a parting direction in which said plate (32) is parted from the frame, and which is parallel to an opening direction of said pull-tab.

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10. In re Claim 9, with reference to Fig. 1 above, Adams et al. discloses that the plate (32) comprises a base portion (32); and a grip portion (39) projecting from said base portion (32) and accessible through said frame (16) when said cap (46) is removed from said pour opening.

11. In re Claim 12, with reference to Fig. 1 above, Adams et al. discloses said grip portion (39) is substantially ring-shaped (col. 3, line 40), projects from one end of said base portion, and is bent over the base portion.

12. In re Claim 16, with reference to Fig. 1 and Fig. 4 above, Adams et al. as modified by Granofsky discloses that the pull tab remains attached to the plate and the removable portion when the plate is extracted from the frame.

13. In re Claim 17, with reference to Fig. 1 and Fig. 4 above, Adams et al. as modified by Granofsky discloses that the plate is connected to the removable portion via the pull-tab.

14. Claims 10 and 11 rejected under 35 U.S.C. 103(a) as being unpatentable over Adams et al. in view of Granofsky as applied to claim 9 above, and further in view of US Patent No. 3,576,272 (Colby hereinafter).

15. In re Claim 10, Adams et al. in view of Granofsky discloses the claimed invention except for two parallel breakable strips of material connecting opposite sides of the base portion of the plate to the mutually facing portions of the frame.

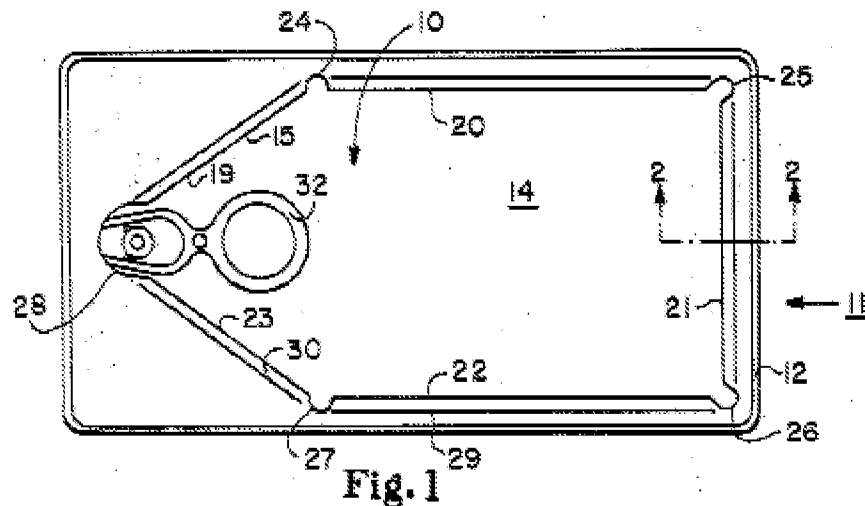


Fig. 1 of Colby

16. However, with reference to Fig. 1 of Colby above, Colby discloses breakable connecting means comprising two parallel strips of breakable material (20, 22).

17. Thus, it would have been obvious to one having ordinary skill in the pertinent art at the time the invention was made to have modified the package disclosed by Adams et al. in view of Granofsky to have two parallel breaking strips as taught by Colby for the predictable result of connecting the base portion of the plate to the frame in a parallel manner.

18. In re Claim 11, with reference to Fig. 1 above, Adams et al. discloses said grip portion (39) is substantially ring-shaped (col. 3, line 40), projects from one end of said base portion, and is bent over the base portion.

19. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Adams et al. in view of Granofsky as applied to claim 1 above, and further in view of US Patent No. 5,484,101 (Hedberg hereinafter).

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20. In re Claim 13, Adams et al. in view of Granofsky discloses the claimed invention except that the removable portion is thermoplastic material.

21. However, Hedberg discloses a thermoplastic material (abstract; col. 2, lines 36-45).

22. Thus, it would have been obvious to one having ordinary skill in the pertinent art at the time the invention was made to have modified the removable portion of the device disclosed by Adams et al. in view of Granofsky to be a thermoplastic material as taught by Hedberg in order to achieve the predictable result of sealing the opening.

23. Claims 2, 3, 4, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adams et al. in view of Granofsky as applied to claim 1 above, and further in view of US Patent No. 4,328,905 (Hardt hereinafter).

24. In re Claims 2 and 15, Adams et al. in view of Granofsky discloses the claimed invention except that the pull-tab comprises an end portion folded over the main portion.

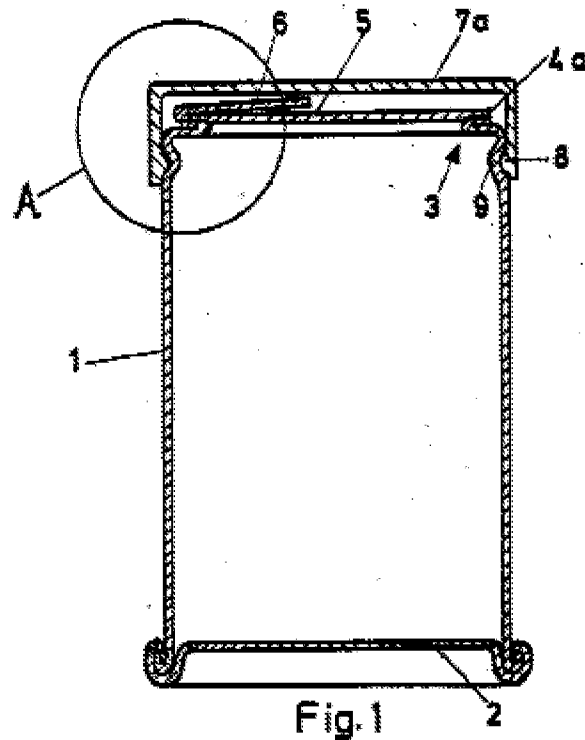


Fig. 1 of Hardt

25. However, with reference to Fig. 1 of Hardt above, Hardt discloses a pull-tab that comprises an end portion (6) that is folded over a main portion (5).

26. Thus, it would have been obvious to one having ordinary skill in the pertinent art at the time the invention was made to have modified the pull-tab disclosed by Adams et al. in view of Granofsky to comprise an end portion that is folded over a main portion as taught by Hardt in order to achieve the predictable result of having a folded pull-tab.

27. In re Claim 3, with reference to Fig. 1 above, Adams et al. discloses that the plate (32) is connected integrally to the frame (16) by breakable connecting means (31) defining a parting direction in which said plate (32) is parted from the frame, and which is parallel to an opening direction of said pull-tab.

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28. In re Claim 4, with reference to Fig. 1 above, Adams et al. discloses that the plate (32) comprises a base portion (32); and a grip portion (39) projecting from said base portion (32) and accessible through said frame (16) when said cap (46) is removed from said pour opening.

29. Claims 5, 6, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adams et al. in view of Granofsky and Hardt as applied to claim 4 above, and further in view of US Patent No. 3,576,272 (Colby).

30. In re Claim 5, Adams et al. in view of Granofsky and Hardt discloses the claimed invention except for two parallel breakable strips of material connecting opposite sides of the base portion of the plate to the mutually facing portions of the frame.

31. However, with reference to Fig. 1 of Colby above, Colby discloses breakable connecting means comprising two parallel strips of breakable material (20, 22).

32. Thus, it would have been obvious to one having ordinary skill in the pertinent art at the time the invention was made to have modified the package disclosed by Adams et al. in view of Granofsky to have two parallel breaking strips as taught by Colby for the predictable result of connecting the base portion of the plate to the frame in a parallel manner.

33. In re Claim 6, with reference to Fig. 1 above, Adams et al. discloses said grip portion (39) is substantially ring-shaped (col. 3, line 40), projects from one end of said base portion, and is bent over the base portion.

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34. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Adams et al. in view of Granofsky, Hardt, and Colby as applied to claim 1 above, and further in view of US Patent No. 5,484,101 (Hedberg hereinafter).

35. In re Claim 13, Adams et al. in view of Granofsky discloses the claimed invention except that the removable portion is thermoplastic material.

36. However, Hedberg discloses a thermoplastic material (abstract; col. 2, lines 36-45).

37. Thus, it would have been obvious to one having ordinary skill in the pertinent art at the time the invention was made to have modified the removable portion of the device disclosed by Adams et al. in view of Granofsky to be a thermoplastic material as taught by Hedberg in order to achieve the predictable result of sealing the opening.

Response to Arguments

38. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

39. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent No. 6,179,147 B1 discloses a removable portion that has a rigid plate and a ring shaped grip.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Tucker whose telephone number is (571)270-5722. The examiner can normally be reached on Monday - Friday, 8:30 a.m. - 6:00 p.m., EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571)272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anthony D Stashick/
Supervisory Patent Examiner, Art
Unit 3781

/D. T./
Examiner, Art Unit 3781